

# STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER AR615

1. **CONTRACTING PARTIES:** This State Cooperative Contract is between the **Division of Purchasing and General Services (State)**, 3150 State Office Building, PO Box 141061, Salt Lake City, UT 84114-1061, an agency of the State of Utah, and the following **CONTRACTOR**:

F5 Networks, Inc.

401 Elliott Avenue West	Name	
Seattle	Address	
City	State	Zip

## LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor  
☐ Non-Profit Corporation  
☒ For-Profit Corporation  
☐ Partnership  
☐ Government Agency

Contact Person Brian Filler Phone #240-401-7829 Fax # 206-272-5556 Email wsca\_admin@f5.com  
Federal Tax ID# 91-1714307 Vendor #            Commodity Code #20458, 20464, 20621, 20623, 20659, 83833, 83800, 88332, 92000

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:

Data communication equipment and services. A detailed list of awarded categories and subcategories are included in Attachment B - Scope of Work.

F5 Networks is authorized to provide equipment and services in the following categories:

- 5.2.1 Data Center Application Services
- 5.2.2 Networking Software
- 5.2.3 Network Optimization and Acceleration
- 5.2.6 Security

3. **CONTRACT PERIOD:** Effective date: June 1, 2014 Termination date: May 31, 2019 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): N/A

4. **PRICING AS PER THE ATTACHMENT C**

PAYMENT TERMS: Net 30

DAYS REQUIRED FOR DELIVERY: 30 days ARO

MINIMUM ORDER: N/A

FREIGHT TERMS: FOB Destination, Freight Prepaid

5. **ATTACHMENT A:** Standard Contract Terms and Conditions, State Cooperative Contract

**ATTACHMENT B:** Scope of Work

**ATTACHMENT C:** Product Offerings and Pricing

**ATTACHMENT D:** Vendors Response to Solicitation JP14001. The parties hereby acknowledge and agree that any exceptions stated in attachment "D" – Vendor's Proposal Response have been removed and/or resolved between the parties. Any exception in attachment "D" are explicitly NOT a part of this contract.

**Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A. State specific Terms and Conditions will be found in the executed Participating Addendums. State Terms and Conditions in an executed Participating Addendum will take priority in the event of conflict**

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between those terms and conditions and this Cooperative Contract.

6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
  - Utah State Procurement Code, Procurement Rules, CONTRACTOR'S response to Bid #JP14001 and JP14001-1 dated July 1, 2013 and December 2, 2013.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

Contractor's Signature

Date

Director, Div. of Purchasing & General Svs.

Date

Keith McManis Vice President

Type or Print Name and Title

Americas channel sales

6/24/2014



## ATTACHMENT A: WSCA-NASPO Master Agreement Terms and Conditions

### **1. AGREEMENT ORDER OF PRECEDENCE:**

The Master Agreement shall consist of the following documents:

1. A Participating Entity's Participating Addendum ("PA");
2. WSCA-NASPO Master Agreement Terms and Conditions;
3. The Statement of Work;
4. The Solicitation; and
5. Contractor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. The Additional Contractor Terms and Conditions are attached as Exhibits 1-4, and incorporated into the WSCA-NASPO Master Agreement Terms and Conditions by this reference. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor.

**2. AMENDMENTS** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Contract Administrator.

**3. ASSIGNMENT/SUBCONTRACT** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA-NASPO Contract Administrator.

**4. CANCELLATION** Unless otherwise stated in the special terms and conditions, any Master Agreement may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders

outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contractor default may be immediate.

## **5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF**

**5.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing the Product under this Master Agreement, be exposed to or acquire information that is confidential to Participating Entity or Participating Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (a) any Participating Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Participating Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Participating Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Participating Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Participating Entity or; (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**5.2 Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of this Master Agreement to Participating Entity hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Participating Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Participating Entity immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement and Contractor shall at its expense cooperate with Participating Entity in seeking injunctive or other equitable relief in the name of Participating Entity or Contractor against any such person. Except as directed by Participating Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Participating Entity's request, Contractor shall turn over to Participating Entity all documents, papers, and other matter in

Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**5.3 Injunctive Relief.** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to Participating Entity that is inadequately compensable in damages. Accordingly, Participating Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Participating Entity and are reasonable in scope and content.

**6. DEBARMENT** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

## **7. DEFAULTS & REMEDIES**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- i. Nonperformance of contractual requirements; or
- ii. A material breach of any term or condition of this Master Agreement; or
- iii. Any representation or warranty by Contractor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
- iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- v. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:

- i. Exercise any remedy provided by law; and
- ii. Terminate this Master Agreement and any related Contracts or portions thereof; and
- iii. Suspend Contractor from receiving future bid solicitations; and
- iv. Suspend Contractor's performance; and

- v. Withhold payment specific to the default until the default is remedied.
- d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum.
- e. **DISCLAIMER; LIMITATIONS OF LIABILITY.** EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED HEREIN, CONTRACTOR (INCLUDING ITS THIRD PARTY SUPPLIERS) DISCLAIMS ANY AND ALL WARRANTIES AND GUARANTEES, EXPRESS, IMPLIED OR OTHERWISE, ARISING, WITH RESPECT TO THE PRODUCTS, SPECIFICATIONS, OR SERVICES DELIVERED HEREUNDER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY OTHER THAN AS PROVIDED ABOVE.

EXCEPT FOR CONTRACTOR'S INDEMNITY OBLIGATIONS DESCRIBED IN SECTIONS 11 AND 12 AND DATA BREACH OBLIGATIONS REQUIRED BY APPLICABLE LAW, CONTRACTOR (INCLUDING CONTRACTOR'S THIRD PARTY SUPPLIERS) WILL NOT HAVE ANY OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH ANY OF THE PRODUCTS OR OTHER GOODS OR SERVICES FURNISHED TO PARTICIPATING ENTITY BY CONTRACTOR, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE COLLECTIVE LIABILITY OF CONTRACTOR AND ITS THIRD PARTY SUPPLIERS UNDER THIS AGREEMENT WILL NOT EXCEED TWO MILLION DOLLARS (US \$2,000,000).

**8. DELIVERY** Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Participating State agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to fraud and Contractor's warranty obligations, or Participating Entity's negligence or willful misconduct. Latent defects after the applicable warranty period are covered by Contractor's applicable maintenance agreement. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**9. FORCE MAJEURE** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA-NASPO may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**10. GOVERNING LAW** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against

the Master Agreement(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreement(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

**11. INDEMNIFICATION** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and against claims, damages or causes of action ("Losses") including reasonable attorneys' fees and related costs of defense resulting from a third party suit or action for any death, injury, or damage to tangible personal property arising from negligent act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, performing under the Master Agreement. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

Condition to Indemnification. If any claim or action is commenced against a party entitled to indemnification under this Section for Losses resulting from such claim or action (a "Claim"), such party shall give prompt written notice to Contractor of such Claim. If Contractor is obligated under this Section to defend the party against such Claim, then Contractor shall take control of the defense and investigation of the Claim, using such attorneys and other assistance as it selects in its discretion. The indemnified party shall cooperate in all reasonable respects in such investigation and defense, at Contractor's expense, including trial and any appeals, provided that such party may also participate, at its own expense, in such defense. No settlement of a Claim that involves a remedy other than payment of money by indemnifying party shall be agreed to and entered without the consent of the indemnified party, which consent shall not be unreasonably withheld.

**12. INDEMNIFICATION - INTELLECTUAL PROPERTY** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable ("Indemnified Party") from and against claims, damages or causes of action including reasonable attorneys' fees arising out of the claim that the Product or its use, infringes a third party's Intellectual Property rights ("Intellectual Property Claim"). The obligations in this Section are the exclusive liability of Contractor to an Indemnified Party under this Agreement for an Intellectual Property Claim. The Contractor's obligations under this section shall not extend to Products or services that have been altered or modified by anyone other than Contractor or according to Contractor's instructions or to any combination of the Product with any other product, system or method, unless the Product embodies a material component of the patented invention allegedly infringed and:

(1) the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the

infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or  
(2) it would be reasonably expected to use the Product in combination with such product, system or method.

The Indemnified Party shall notify the Contractor within a reasonably prompt time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonably prompt notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. The Contractor shall have control over the defense and settlement of any Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. Contractor will have the right, at its option and expense: (i) to obtain for Indemnified Party the rights to use the Product, (ii) to replace or modify the Product so that it becomes non-infringing, or (iii) to accept return of the Product for a refund not to exceed the purchase price paid by Indemnified Party for such Product based upon a three year straight line depreciation. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**13. INDEPENDENT CONTRACTOR** The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

**14. INDIVIDUAL CUSTOMER** Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Participating Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Participating Entity individually for services purchased directly from Contractor. Products shall be ordered and purchased through Contractor's Authorized Data Communications Resellers, which are independent parties and not affiliates of Contractor.

**15. INSURANCE** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or at a Participating Entity's option, result in termination of its Participating Addendum.



Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Participating Entity by the Contractor.

Prior to commencement of the work, Contractor shall provide to the Participating Entity a written endorsement to the Contractor's general liability insurance policy that (i) names the Participating Entity as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Contractor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at State's sole option, result in this Master Agreement's termination.

Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement.

**16. LAWS AND REGULATIONS** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**17. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY** Contractor grants to the Participating Entity a nonexclusive, perpetual, royalty-free, irrevocable, limited license to use for its internal business purposes Intellectual Property used or delivered under this Master Agreement ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Participating Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

**18. NO WAIVER OF SOVEREIGN IMMUNITY** In no event shall this Master Agreement, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Participating Entity, be a waiver by the Participating Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**19. ORDER NUMBERS** Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**20. PARTICIPANTS** WSCA-NASPO is the cooperative purchasing arm of the National Association of State Procurement Officials. It is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.,) for all 50 states, the District of Columbia and the organized US territories. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

**21. ENTITY PARTICIPATION** Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

**22. PAYMENT** Payment for completion of a contract order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor, or Contractor authorized data communications reseller, as applicable, may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing

Card” with no additional charge. Products shall be ordered and paid for through an authorized data communications reseller, except for services ordered directly from Contractor. Maintenance services shall be paid for annually in advance.

**23. PUBLIC INFORMATION** This Master Agreement and all related documents are subject to disclosure pursuant to the Participating Entity’s public information laws.

**24. RECORDS ADMINISTRATION AND AUDIT** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this Master Agreement. These records will be retained by the contractor for at least four years after the Master Agreement terminates, or until all audits initiated within the four years have been completed, whichever is later. The contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Master Agreement and any order placed under this Master Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**25. REPORTS and ADMINISTRATIVE FEES** The contractor shall submit quarterly reports to the WSCA-NASPO Contract Administrator showing the quantities and dollar volume of purchases by each participating entity.

The contractor must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the Master Agreement. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on sales of products and services. The WSCA-NASPO administration fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated in a Participating Addendum that is made a part of the Master Agreement. The contractor may adjust the Master Agreement pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO administrative fee or the prices paid by the procuring agencies outside the jurisdiction of the State requesting the additional fee.

**26. STANDARD OF PERFORMANCE AND ACCEPTANCE** The Standard of Performance applies to all Product(s) purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) purchased. For clarification, this Section only applies to Product(s) purchased, and not for Product(s) replaced or substituted as part of a maintenance or support agreement. “Standard of Performance” means that the Product substantially conforms to its published specifications and any additional performance specifications agreed to by the parties in writing. The Acceptance period shall be fifteen (15) calendar days or other time period identified in the solicitation or the Participating

Addendum and agreed to in writing by Contractor, starting from the day after the Product is delivered. If the Product does not meet the Standard of Performance during the initial period of Acceptance, Participating Entity shall notify Contractor of non-compliance within the Acceptance period. If Participating Entity does not notify Contractor of non-compliance within this fifteen (15) day time period, the Product shall be deemed Accepted and to have met the Standard of Performance. Upon notification of non-compliance, the Contractor will have fifteen (15) calendar days to cure the Standard of Performance issue(s). If after the cure period, the Product still has not met the Standard of Performance Participating Entity may, at its option: (1) declare Contractor to be in breach and terminate the Order and request refund of any fees paid for the Products not meeting the Standard of Performance; (2) demand replacement Product from Contractor at no additional cost to Participating Entity; or, (3) continue the cure period for an additional time period agreed upon by the Participating Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. The warranty period will begin upon shipment of the Product.

**27. SYSTEM FAILURE OR DAMAGE** In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

**28. TITLE OF PRODUCT** Upon Acceptance by the Participating Entity, Contractor shall convey to Participating Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use the Embedded Software licensed with the Product, except for licenses purchased for a time-limited period, in which case the license shall be perpetual for the applicable time period. If Participating Entity subsequently transfers title of the Product to another entity, Participating Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Participating Entity or Participating Entity's transferee.

**29. WAIVER OF BREACH** Failure of Lead State or Participating Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement or Participating Addendum.

**30. WARRANTY** The Contractor warrants for a period of thirteen (13) months from the date of shipment that for the hardware portion of the Product: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is

suitable for any special purposes identified in the solicitation or for which the Participating Entity and the Contractor have agreed to in writing, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. The Contractor warrants that for a period of 120 days from the date of shipment that the software portion of the Product will perform in accordance with Contractor's published specifications for the software and any specifications agreed to in writing between Participating Entity and Contractor. Other than the foregoing warranties, the Products are provided as is. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Participating Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product fails to meet the performance warranty, the Contractor will refund the full amount of any payments that have been made for the failing Product. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, subject to the limitations of liability and disclaimers described herein, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

**31. ASSIGNMENT OF ANTITRUST RIGHTS** Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Master Agreement or Participating Addendum, to irrevocably assign to a Participating Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**32. WSCA-NASPO eMARKET CENTER** Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's contractor (SciQuest) and the awarded contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological

understanding.

## **Definitions**

**Acceptance** - means a written notice from a purchasing entity to contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the product, unless the Purchasing Entity provides a written notice of rejection to contractor.

**Acceptance Testing** - means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

**Contractor** - means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Intellectual Property** - means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** - means the State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States.

**Master Agreement** - means the underlying agreement executed by and between the Lead State, as WSCA-NASPO contract administrator, acting on behalf of WSCA-NASPO, and the Contractor, as now or hereafter amended.

**Order** - means any purchase order, sales order, or other document used by a Participating Entity to order the Products.

**Participating Addendum** - means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements ,e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** - means a state, or other legal entity, properly authorized by a state to enter into the Master Agreement or Participating Addendum or who is authorized to order under the Master Agreement or Participating Addendum.

**Product** - Any equipment, software (including embedded software), documentation, or deliverable supplied or created by the Contractor pursuant to this Master Agreement.

**WSCA-NASPO** -is a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for all states and the District of Columbia. WSCA-

NASPO is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO).

#### **Additional Definitions and Alternative Terms for Consideration**

Below are additional definitions and alternative terms for consideration by the sourcing teams depending upon the nature of the solicitation and negotiations between the Contractor and Vendor.

**Embedded Software** - means one or more software applications which permanently reside on a computing device.

**Machine Code** - means microcode, basic input/output system code, utility programs, device drivers, diagnostics, and another code delivered with a computing device for the purpose of enabling the function of the computing device, as stated in its published specifications.

(revised March 2013)

## EXHIBIT 1

### F5 Networks Additional Vendor Terms and Conditions

#### End User License Agreement

1. Scope. This License applies to the software product ("Software") you have licensed from F5 Networks, Inc. ("F5"). Certain Software is licensed for use in conjunction with F5 hardware which together with the Software will be referenced as the "Product." This License is a legal agreement between F5 and the single entity ("Licensee") that has acquired the Software from F5 under these terms and conditions. The Software incorporates certain third party software programs subject to the terms and restrictions of the applicable licenses identified herein.

2. License Grant. Subject to the terms of this License, F5 grants to Licensee a perpetual, non-exclusive, non-transferable license to use the Software for which Licensee has paid the required license fees in object code form for Licensee's internal business purposes. Other than as specifically described herein, no right or license is granted to any of F5's trademarks, patents, copyrights, or other intellectual property rights and F5 retains all rights not granted herein. The Software incorporates certain third party software, which is used subject to licenses from the respective owners. The third party software is identified in the Software release notes for the Software version. The protections given to F5 under this License also apply to the suppliers of this third party software.

3. Restrictions.

(a) The Software, documentation and the associated copyrights and other intellectual property rights are owned by F5 or its licensors and are protected by law and international treaties. Licensee may not copy or translate the documentation provided with the Software or available online ("Documentation") without F5's prior, written consent. Licensee may install, use, access, display and run the Software only in the manner in which it has been licensed as indicated herein and in the applicable purchase order, quote or the license file for such Product or Software, including but not limited to any restrictions on number of protected applications, number or type of licensed devices, number of authorized copies or instances, number of users, bandwidth, non-production use or database restrictions. Licensee agrees that it will not defeat, circumvent or disable any copy protection mechanism or mechanism in the Software used to limit license duration or access to non-licensed functionality or capacity, and that any such attempt will be a material breach of this Agreement. F5 reserves the right to audit Licensee's use of the Software or authorize others to conduct such an audit on its behalf and to disable any application or functionality that has not been specifically licensed, in addition to any other rights and remedies available to F5.

(b) For Software modules purchased in conjunction with a F5 device, the Software is not transferable to other F5 devices or third party hardware. For Software provided in stand-alone form (not embedded in a F5 hardware Product), Licensee may only install and use the Software in object code form on the server(s) for which Licensee has a valid license key issued to it by F5 or its authorized sub-licensor and only for the duration of the validity of such license key. The use of any hardware or software to pool resources or reduce the number of devices that directly access or use the Software (sometimes referred to as 'virtualization') will not reduce the number of license keys required. Licensee must have a separate license key for each instance of the Software. F5 may restrict Licensee's use of the Software, by at least one of the following locking methods: (i) an instance identifier; (ii) hypervisor in use; (iii) a bridge; and/or (iv) Media Access Control (MAC) address. Licensee agrees that it will not attempt to circumvent any of the foregoing license key restrictions or to have others do so on its behalf.



(c) Certain portions of the Software include third party software modules as identified in the applicable Software release notes, including but not limited to, MySQL licensed from MySQL AB and Java™ licensed from Oracle America, Inc., and are subject to additional limitations imposed by those third parties ("Restricted Third Party Software"). Certain portions of the Software may also include geographical or other data ("Data"). Licensee agrees that it will only use such Restricted Third Party Software or Data in conjunction with the Product and not as standalone software. Licensee will not (i) copy the Restricted Third Party Software or Data onto any public or distributed network; (ii) use the Restricted Third Party Software or Data separately to operate in or as a time-sharing, outsourcing, service bureau, application service provider or managed service provider environment; (iii) use the Restricted Third Party Software or Data as a general server, as a standalone application or with applications other than the Software under this license; (iv) change any proprietary rights notices which appear in the Restricted Third Party Software or Data; or (v) modify the Restricted Third Party Software or Data.

(d) Licensee may not copy (except to make one archival copy for backup and disaster recover purposes), modify, sell, sub-license, rent or transfer the Software, Data or any associated Documentation to any third party. Licensee may not disassemble, reverse compile or reverse engineer the Software or any Data incorporated in the Software or encourage others to do so except as required by law for interoperability purposes, and then only after Licensee has given Supplier an opportunity to provide information or software necessary to resolve such interoperability issues.

4. Export Control. F5's standard Product incorporates cryptographic software. Licensee agrees to comply with the Export Administration Act, the Export Control Act, all regulations promulgated under such Acts, and all other US government regulations relating to the export of technical data and equipment and products produced therefrom which are applicable to Licensee. In countries other than the US, Licensee agrees to comply with the local regulations regarding importing, exporting or using cryptographic software. Licensee agrees it will not export or re-export the Software to any country, person, or entity subject to U.S. export restrictions. Specifically, Licensee agrees not to export or re-export the Software: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, or to any national of any such country, wherever located, who intends to transmit or transport the Software back to such country; (ii) to any person or entity who Licensee knows or has reason to know will utilize the Software or portion thereof in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government, including but not limited to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By installing or using the Software, Licensee represents and warrants that it is not located in, under control of, or a national or resident of any such country or on any such list.

5. Limited Warranty. F5 warrants that for a period of 120 days from the date of shipment: (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. In no event does F5 warrant that the Software is error free, that it will operate with any software or hardware other than that provided by F5 or specified in the documentation, or that the Software will satisfy Licensee's own specific requirements.

(a) Remedy. Licensee's exclusive remedy under this limited warranty is that F5, at F5's option, will repair or replace any Software that fails during the warranty period at no cost to Licensee. F5 will replace defective media or documentation or, at its option, undertake reasonable efforts to modify the Software to correct any substantial non-conformance with the specifications.

(b) **Restrictions.** The foregoing limited warranties extend only to the original Licensee, and do not apply if the Software (i) has been altered, except by F5 or an F5-designated representative or in accordance with F5 instructions, (ii) has not been installed, operated, repaired, or maintained in accordance with F5's instructions, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident or (iv) has been operated outside of the environmental specifications for the Software. F5's limited software warranty does not apply to software corrections or upgrades.

6. **Notice to U.S. Government End Users.** In the event that any Software or Documentation are assigned to the United States Government, the Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this End User License Agreement may be incorporated, Licensee may provide to Government end user or, if this Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in this End User License Agreement. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation" and constitutes acceptance of the rights and restrictions herein.

7. **Non-Production Use Software.** If Licensee purchases an F5 Product or licenses F5 Software designated as "non-production," "non-commercial," "lab" or "development" Product in the applicable purchase order, quote or the license file for such Product or Software ("Non-Production Software"), Licensee may use the Software included with such Product to conduct testing and development in Licensee's non-production environment only and not to manage data traffic or applications in the ordinary course of Licensee's business. Licensee agrees that any use of Non-Production Software in violation of the preceding sentence is a material breach of this Agreement.

8. **Evaluation Software.** If the Software is "Evaluation Software," notwithstanding any other terms to the contrary in this Agreement, Licensee may use the Software only for its internal demonstration, test or evaluation purposes and not in a production environment. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS LICENSE, F5 DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, FOR EVALUATION SOFTWARE AND IT IS PROVIDED ON AN "AS IS" BASIS. EVALUATION SOFTWARE HAS A NON-PERPETUAL TIME LIMITED LICENSE THAT WILL "TIME-OUT" AND DISABLE THE SOFTWARE UPON EXPIRATION OF THE EVALUATION PERIOD. Licensee agrees that it will not attempt to defeat or circumvent any duration mechanism for evaluation Software. Licensee also agrees that it will not use any evaluation Software beyond the prescribed license duration.

9. **Acknowledgements.** The Software includes Data and software developed by third parties subject to separate licenses. Please refer to the Acknowledgement section found in the Software Documentation.

10. **GPL.** Limited portions of the software contain software code subject to the GNU GPL Version 2. Please refer to the Acknowledgement section found in the Software documentation for the specific references. GPL software is not subject to the restrictions set forth in this License but is licensed separately under the GPL. Only those portions of the software that are licensed under the GPL are subject to the GPL license. All other software code is subject to the restrictions set forth elsewhere in this License. Furthermore, those portions of the software that are licensed under the GPL are subject to the remaining terms and conditions of the License to the extent that those terms are not inconsistent with the terms of the GPL.

## EXHIBIT 2

### **Maintenance Terms and Conditions**

1. **Term.** Coverage under this Agreement will commence on the earlier of (i) (90) days after the date the Product is shipped from the manufacturing facilities of F5, or (ii) the date the covered Product is activated with F5, or (iii) if F5 has no record of license activation, Service will begin on the ship date and no service extensions will apply. Customer support agreements will automatically renew for additional one year terms upon submission of a purchase order for renewal, unless either Customer or F5 provides written notice of termination at least 30 days prior to the end of any such term. In the event that Customer accesses F5 support services in any way after this Agreement has expired or been terminated, Customer will continue to be bound by this Agreement. Each renewal will be at F5's then-current rate. Services pricing will be charged for all F5 product platform and add-on software purchases. The total service price will be calculated as a percentage of total list prices, appropriate to the level of service purchased. Either party may terminate this Customer support agreement upon 30 days' notice in the event of a material breach by the other party, provided such breach is not cured by the end of such 30 day period.
2. **F5's Obligations.**
  - (a) F5 will provide telephone support for any product covered by this Agreement. Such support will consist of responding to trouble calls as reasonably required to make the product perform as described in the current product specifications. Customer will receive Standard or Premium service as indicated in its order for the customer support services.
  - (b) Customer is entitled, at no charge, to updated versions of covered products, such as bug fixes and new releases that are generally made available at no additional cost to F5's customers that have ordered maintenance services for the relevant time period. The foregoing right shall not include any options, upgrades or future products which F5 or third party vendors charge for as a separate product or where Customer's installed hardware platform has no further upgrades available according to either (i) the applicable F5 software release notes provided with each release and also available for review via the Ask F5 service or (ii) a written end-of-life announcement communicated to Customer by F5. F5 is not obligated to provide hardware upgrades to ensure compatibility with new software versions of its products or to ensure that new software versions of its products are compatible with outdated hardware platforms.
  - (c) F5 will, at its option, repair or replace any product or component that fails during the term of Customer's support agreement at no cost to Customer, provided that Customer contacts the F5 technical support center to report the failure and complies with F5's return policies. Products returned to F5 must be pre-authorized by F5 with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by F5's receiving department. All other packages will be rejected. A replacement product or component will be shipped from F5's USA operations to the Customer on the next business day following F5's confirmation of the failure of the original product or component via remote troubleshooting and receipt from the customer of the RMA Template containing customer provided delivery and system configuration information (Note: there are international exceptions). Customer will return the failed product or component to F5 under the RMA number issued by F5 upon receipt of the replacement. F5 may invoice the Customer for any failed products or components (a) with respect to which the damage to such Products or components is attributable to actions taken by Customer or any of its agents (including but not limited to the categories set forth in Section 3 below); or (b) not returned within ten (10) business days of shipment of the replacement unit(s) (c) Product not returned in the original packaging box or the replacement unit packaging that causes undue damage to the unit. Title to any returned products or components will transfer to F5 upon receipt. F5 will be responsible for all freight charges for returned Products or components provided Customer uses F5 designated carrier. F5 will replace defective media or

documentation or, at its option, undertake reasonable efforts to modify the software to correct any substantial non-conformance with the specifications.

- (d) ASK F5 is a 24-hour, 7-day-a-week online service that allows customers to receive rapid answers to F5 product and service-related questions. Customers simply type a question into their Web browser; ASK F5 responds to the query. ASK F5 is also fully integrated with F5's technical support center, allowing customers to quickly communicate on-line with support staff who are experts in F5 products. F5 provides ASK F5 online support services at no charge during the term of this Agreement, provided that Customer must register to obtain a user name and password in order to access the Ask F5 services.
- (e) If remote access is not an available option, it will take significantly longer to identify and resolve the outstanding incident. When accessing customer systems F5 will:
- Inform customer before any access is made.
  - Backup copies of configuration files will be made before any work is performed.
  - No changes will be made without prior authorization.
  - Once authorized, changes will be made on stand-by units whenever possible.
  - Make use of security shred bins for all sensitive customer information that may be written on paper.
  - F5 does not send out customer information
- (f) F5 specifically disclaims any and all support or repair obligation with respect to any application that has not undergone feature-set approval and F5's QA process for feature integration (a "Non-Supported Application"). Customer acknowledges that if a new support case is created in accordance with F5's support process where the issue is suspected to be, or is found to be, attributable to a Non-Supported Application, F5 may elect one of the following options, at its sole discretion:
- Remove the Non-Supported Application, following consultation with Customer, in order to continue to resolve the issue; or
  - Cease work on the case and recommend that Customer remove the Non-Supported Application from the F5 Product in order to continue toward resolution.
  - If the F5 Product continues to function Improperly or if the issue persists due to the Non-Supported Application, F5 will cease all support efforts on the case. The parties will then cooperate to develop a mutually satisfactory "for-fee" arrangement for continuing work on the issue.
3. **Restrictions.** Services provided by F5 under this Agreement are limited to the covered product and are contingent upon the Customer's proper use of the product in the application for which it was designed. F5 will not be obligated to provide any service or to correct any malfunction, damage or other problem if the product: (a) has been altered, except by F5 or an F5-designated representative or in accordance with F5 instructions, (b) has not been installed, operated, repaired, or maintained in accordance with F5 instructions, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, (d) has been operated outside of the environmental specifications for the product or (e) is related to configuration of Customer's network beyond that necessary to the use or installation of F5 products. F5 reserves the right to limit or terminate development support (including error correction services) of any product version one (1) year after the date of release of a subsequent product version in accordance with its end of life policies (available through AskF5). The foregoing restriction shall apply even if Customer elects to install a product version other than the then-currently shipping version of the product.
4. **Recertification.** Requests for maintenance on Products purchased from sources other than an F5 VAR or directly from F5 (i.e. used or purchased from an online auction), or where maintenance has lapsed on the Product for more than 180 days and written notice, which may include email, has been provided to the Participating Entity ninety (90) days prior to the lapse on the maintenance, will first be subject to an inspection by a representative of F5 to confirm that the Product is operational

maintainable, at the rate of \$10,000 USD per unit (\$20,000 USD for redundant systems) payable to F5 Networks. The inspection will determine if the unit is at a maintainable state and eligible for coverage. Once the unit has passed inspection, a maintenance contract and additional services may be purchased at the current published rates.

5. **Lapsed Service Fee.** If Customer purchases an annual Maintenance Agreement for a Product where maintenance has lapsed on the Product by up to 180 days, Customer will be charged a "Lapsed Service" fee at the rate of \$1,000 USD in addition to the then-current standard maintenance fee pro-rated for the time period during which no maintenance was in effect.
6. **Expedited RMA Services (Limited Availability Area).** Where Customer has purchased an Expedited RMA service, the terms of this Section will also apply. Products covered under any of these services must have an active maintenance service contract. Expedited RMA service purchased by Customer will be available fifteen business days after the receipt and acceptance of the purchase order for service and the customer's completed Expedited RMA Service paperwork, providing full hardware configuration to be supported and accurate installation address of product (template provided by F5 Sales). F5 will make a reasonable effort to match the current configuration of the supported hardware. However, it is the customer's duty to notify F5 in writing of any hardware configuration changes or changes to the Product location covered by this agreement. F5 requires ten business days to implement necessary changes to support the new configuration and/or location, and will be subject to Availability Area. If change notification is not made, F5 will take responsibility for the configuration and location on file at F5 only. Notification regarding physical moves of appliances must be made via email to [RMACHANGES@F5.COM](mailto:RMACHANGES@F5.COM).

**4 Hour RMA Services:** For customers with Products deployed within the F5 Four Hour RMA Availability Area (the Availability Area), F5 will make a commercially reasonable effort to deliver a Replacement unit within 4 hours of an F5 determination that a Replacement unit is needed and receipt from the customer of the completed RMA Template containing customer provided delivery and system configuration information. Customer acknowledges and agrees that the Replacement unit may be delivered with a different System Software version than the version installed on the failed unit. For customers with units that are not within the Availability Area or who otherwise do not meet the criteria listed for F5 Four Hour RMA Availability, F5 will use commercially reasonable efforts to deliver a replacement unit as soon as practicable. The four hour period will be defined by the business hours covered by customer's support contract. Accessories such as optical modules and cables and mechanical items such as rail kits, latches, and bezels are not covered by Expedited RMA Services. Limited parts, including ARX batteries, are not covered by Expedited RMA Services for safety and regulatory reasons and will be subject to F5's standard RMA processes. Please contact your F5 representative for further details. Provided the customer technical contact completes the RMA Template, for customers that purchase the Expedited 4 Hour RMA with Technician Service (Limited Availability Area), the technician, working under the direct supervision of a remote F5 Network Support Engineer, will:

- a) Remove and replace the failed unit;
- b) Load the F5 Manufacturing Released System Software version on the Replacement unit that most closely matches, without exceeding, the System Software version on the failed unit;
- c) Activate the License on the Replacement Appliance where applicable.

The Customer understands and agrees that execution of the three steps above requires the Customer to provide a site escort for the Technician as well as high speed internet access and telephone connectivity both in reasonable proximity to the work area. The technician will not: a) Troubleshoot; b) Apply Hot Fixes or software patches; c) Upgrade software; d) Make changes to the environment; e) Restore the

configuration, create a basic configuration, or perform any other configuration activity f) Fulfill requests made by the customer's on-site representative.

### EXHIBIT 3

#### **Consulting Services Terms and Conditions**

1. F5 will provide Customer with a specified number of hours of professional services ("Services") as set forth in a Statement of Work. If deliverables are defined by the parties in the SOW, F5 will use its commercially reasonable efforts to provide such deliverables (the "Deliverables"), but will not be obligated to provide Services beyond the hours set forth in the SOW. In the event that a Statement of Work is not specified, F5 will use commercially reasonable efforts to provide such Services as requested by Customer up to the number of hours defined by the parties.

**2. Intellectual Property Rights.** Except as described below, the Deliverables which are first produced or created for Customer by F5 under a Statement of Work incorporating this Agreement shall be the property of Customer and shall be considered works made for hire under this Agreement. Notwithstanding the foregoing, any developed technology, including patentable and unpatentable ideas, know-how, technical data, or techniques, and all intellectual property rights appurtenant thereto which may be developed by F5 under this Agreement or in the delivery of any services hereunder that derive from, improve, enhance or modify F5's product(s) or pre-existing intellectual property, including but not limited to product enhancements embodied in "iRules" and/or using the "iControl" open API, will be the property of F5 (collectively, "F5 Developments"). Customer will have a non-exclusive license to the F5 Developments to the extent necessary to enable Customer to use any F5 Deliverable(s). Subject to the limitations placed on F5 by the confidentiality provisions of this Agreement or by any existing non-disclosure agreement between F5 and Customer, F5 may in its sole discretion develop, use, market, license, or sell the F5 Developments and any software, application or product that is similar or related to that which was developed by F5 for Customer. F5 shall not be required to disclose information concerning any F5 Developments which F5 deems to be proprietary or confidential.

**3. Limited Warranties, Disclaimer, and Exceptions.** F5 warrants that the Services provided hereunder will be performed in a professional manner consistent with the quality of F5's performance of services for similarly situated customers and in accordance with generally accepted industry standards. F5 makes no guarantees or assurances that the Services will achieve Customer's specific goals or provide additional functionality to Customer's F5 appliance. F5 EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

## EXHIBIT 4

### Evaluation Terms and Conditions

**1. EVALUATION SCHEDULES:** From time to time the parties may, under this Agreement, execute schedules pursuant to which F5 agrees to provide the F5 products (each a "Product") described in such schedules to Customer for Customer's internal testing pursuant to this Agreement (each an "Evaluation Schedule"). The Products for which this Agreement is being entered into may include (a) hardware (including embedded software and intellectual and proprietary rights related thereto), (b) software (including intellectual and proprietary rights related thereto) and (c) other products described in an Evaluation Schedule. Each Evaluation Schedule together with any other documents incorporated into the Evaluation Schedule will constitute a separate and independent contract for evaluation testing of the applicable Product(s) between F5 and Customer. F5 and Customer will enter into a separate Evaluation Schedule for each evaluation undertaken by Customer. Multiple Evaluation Schedules may be executed and active under this Agreement. Evaluation Schedule(s) will set forth the applicable Loan Period, which may be extended upon mutual agreement between the parties. Customer will not lease, sublease, assign, or otherwise transfer or dispose of the Product(s). Customer will not remove, move, or relocate the Product from its Ship To Location identified in the Evaluation Schedule without prior written approval from F5.

**2. DISCLAIMER:** The Product is provided "AS IS" and possibly with faults. F5 DISCLAIMS ANY AND ALL WARRANTIES AND GUARANTEES, EXPRESS, IMPLIED OR OTHERWISE, ARISING, WITH RESPECT TO THE PRODUCT DELIVERED HEREUNDER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. CUSTOMER WILL USE THE PRODUCT AT ITS OWN RISK. F5 WILL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT DAMAGES INCURRED IN USING THE PRODUCT. IN NO EVENT WILL F5 BE LIABLE FOR LOSS OF PROFITS, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, NOR FOR PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**3. TERMINATION AND DUTY TO RETURN:** Each Evaluation Schedule will terminate on the date indicated in the Evaluation Schedule. Either party may terminate an Evaluation Schedule or this Agreement at any time without cause upon thirty (30) days written notice to the other party; however, all obligations of confidentiality and the disclaimer and limitations described in Section 2 will survive termination of this Agreement for any reason. Upon termination of an Evaluation Schedule or this Agreement, Customer will promptly return the Product(s) to F5 by suitably secure courier with active tracking (such as Federal Express), or otherwise as requested by F5 in equivalent working condition as when delivered to Customer, excepting reasonable wear and tear. Customer will be responsible for any damaged Products or components caused by Customer's negligence or intentional misconduct or that of its employees or agents.



## ATTACHMENT B – Scope of Work

The following categories are authorized under this contract:

**5.2.1 DATA CENTER APPLICATION SERVICES** — Application networking solutions and technologies that enable the successful and secure delivery of applications within data centers to local, remote, and branch-office users using technology to accelerate, secure, and increase availability of both application traffic and computing resources.

**5.2.1.1 Virtualized Load Balancers** — Virtual devices that act like a reverse proxy to distribute network and/or application traffic across multiple servers to improve the concurrent user capacity and overall reliability of applications. Capabilities should include:

- SSL (Secure Sockets Layer) Off-loading
- Caching capabilities
- Layer 4 Load Balancing
- Layer 7 Load Balancing
- Detailed Reporting
- Supports multiple load balancers in the same system for multiple groups
- Supports TLS1.2

**5.2.1.2 WAN Optimization** — An appliance utilizing a collection of techniques for increasing data-transfer efficiencies across wide-area networks (WAN).

Capabilities should include:

- CIFS (Common Internet File System) acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization

**5.2.2 NETWORKING SOFTWARE** — Software that runs on a server and enables the server to manage data, users, groups, security, applications, and other networking functions. The network operating system is designed to allow shared file and printer access among multiple computers in a network, typically a local area network (LAN), a private network or to other networks. Networking software capabilities should include:

- Restartable Process
- High availability options
- Targeted operating systems, i.e. DC, campus, core, wan, etc.
- Operating System Efficiencies

**5.2.2.1 Network Management and Automation** — Software products and solutions for data center automation, cloud computing, and IT systems management.

**5.2.2.2 Data Center Management and Automation** — Software products and solutions that capture and automate manual tasks across servers, network, applications, and virtualized infrastructure.

**5.2.2.3 Cloud Portal and Automation** — Software products and solutions for cloud management with policy-based controls for provisioning virtual and physical resources.

- 5.2.2.4 Branch Office Management and Automation** — Software products and solutions for management of branch offices. Capabilities include remote troubleshooting, device management, WAN performance monitoring.

**5.2.3 NETWORK OPTIMIZATION AND ACCELERATION** — Devices and tools for increasing data-transfer efficiencies across wide-area networks.

- 5.2.3.1 Dynamic Load Balancing** — An appliance that performs a series of checks and calculations to determine which server can best service each client request in order to select the server that can successfully fulfill the client request and do so in the shortest amount of time without overloading either the server or the server farm as a whole.

- 5.2.3.2 WAN Acceleration** — Appliance that optimizes bandwidth to improve the end user's experience on a wide area network (WAN). Capabilities should include:

- CIFS acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization

- 5.2.3.3 High Availability and Redundancy** — Limits any disruption to network uptime should an appliance face unforeseen performance issues. Transparently redistributes workloads to surviving cluster appliances without impacting communication throughout the cluster.

**5.2.6 SECURITY**

- 5.2.6.1 Data Center and Virtualization Security Products and Appliances** — Products designed to protect high-value data and data center resources with threat defense and policy control.

- 5.2.6.2 Intrusion Detection/Protection and Firewall Appliances** — Provide comprehensive inline network firewall security from worms, Trojans, spyware, key loggers, and other malware. This includes Next-Generation Firewalls (NGFW), which offer a wire-speed integrated network platform that performs deep inspection of traffic and blocking of attacks. Intrusion Detection/Protection and Firewall Appliances should provide:

- Non-disruptive in-line bump-in-the-wire configuration
- Standard first-generation firewall capabilities, e.g., network-address translation (NAT), stateful protocol inspection (SPI) and virtual private networking (VPN), etc.
- Application awareness, full stack visibility and granular control
- Capability to incorporate information from outside the firewall, e.g., directory-based policy, blacklists, white lists, etc.
- Upgrade path to include future information feeds and security threats
- SSL decryption to enable identifying undesirable encrypted applications (Optional)

- 5.2.6.3 Logging Appliances and Analysis Tools** — Solutions utilized to collect, classify, analyze, and securely store log messages.

- 5.2.6.4 Secure Edge and Branch Integrated Security Products** — Network security, VPN, and intrusion prevention for branches and the network edge. Products typically consist of appliances or routers.

**5.2.6.5 Secure Mobility Products** — Delivers secure, scalable access to corporate applications across multiple mobile devices.

**5.2.6.6 Encryption Appliances** — A network security device that applies crypto services at the network transfer layer - above the data link level, but below the application level.

**5.2.6.7 On-premise and Cloud-based services for Web and/or Email Security** — Solutions that provide threat protection, data loss prevention, message level encryption, acceptable use and application control capabilities to secure web and email communications.

**5.2.6.8 Secure Access** — Products that provide secure access to the network for any device, including personally owned mobile devices (laptops, tablets, and smart phones). Capabilities should include:

Management visibility for device access

Self-service on-boarding

Centralized policy enforcement

Differentiated access and services

Device Management

**5.3.1 SERVICES** — For each Category above (5.21-5.30), the following services should be available for procurement as well at the time of product purchase or anytime afterwards.

**5.3.1.1 Maintenance Services** — Capability to provide technical support, flexible hardware coverage, and smart, proactive device diagnostics for hardware.

**5.3.1.2 Professional Services**

Deployment Services

Survey/ Design Services — Includes, but not limited to, discovery, design, architecture review/validation, and readiness assessment.

Implementation Services — Includes, but not limited to, basic installation and configuration or end-to-end integration and deployment.

Optimization — Includes, but not limited to, assessing operational environment readiness, identify ways to increase efficiencies throughout the network, and optimize Customer's infrastructure, applications and service management.

Remote Management Services — Includes, but not limited to, continuous monitoring, incident management, problem management, change management, and utilization and performance reporting that may be on a subscription basis.

Consulting/Advisory Services — Includes, but not limited to, assessing the availability, reliability, security and performance of Customer's existing solutions.

Data Communications Architectural Design Services — Developing architectural strategies and roadmaps for transforming Customer's existing network architecture and operations management.

Statement of Work (SOW) Services — Customer-specific tasks to be accomplished and/or services to be delivered based on Customer's business and technical requirements.

**5.3.1.3 Partner Services** — Provided by Contractor's Authorized Partners/Resellers.

Subject to Contractor's approval and the certifications held by its Partners/Resellers, many Partners/Resellers can also offer and provide some or all of the Services as listed above at competitive pricing, along with local presence and support. As the prime, Contractor is still ultimately responsible for the performance of its Partners/

Resellers. Customers can have the option to purchase the Services to be directly delivered by Contractor (OEM) or its certified Partners/Resellers.

**5.3.1.4 Training** — Learning offerings for IT professionals on networking technologies, including but not limited to designing, implementing, operating, configuring, and troubleshooting network systems pertaining to items provided under the master agreement.

STATE OF UTAH CONTRACT NUMBER – AR615

Attachment C – Pricing  
Solicitation Number JP14001  
WSCA-NASPO Data Communications RFP

Vendor Name: F5 Networks Inc.

**RFP Product Categories:**

**Minimum Discount Percentage:**

**5.2.1 DATA CENTER APPLICATION SERVICES**

**Discount % \_\_13\_\_**

**5.2.2 NETWORKING SOFTWARE**

**Discount % \_\_13\_\_**

**5.2.3 NETWORK OPTIMIZATION AND ACCELERATION**

**Discount % \_\_13\_\_**

**5.2.6 SECURITY**

**Discount % \_\_13\_\_**

Current F5 Networks Inc. pricing sheets, approved by the State of Utah, can be found at the following web link:

**[VENDOR PRICING SHEETS CLICK HERE](#)**

**IMPORTANT:** The minimum discount percentage listed in this attachment is for general informational purposes only and may not apply to every line item authorized under this contract. For specific item pricing, please refer to the contact price list weblink provided in this document.

Vendors are required to post state specific pricing on their hosted website or through the WSCA-NASPO eMarket center as required by solicitation JP14001, in addition to the vendor pricing sheets approved and hosted by the State of Utah's master contract summary sheet. The State of Utah vendor pricing sheets will serve as the approved base price and do not include any applicable state specific administrative fees. State specific pricing, hosted on the vendor website or WSCA-NASPO eMarketcenter may reflect authorized state specific administrative fees. No other fees are authorized under this contract. Pricing audits may be conducted at any time by the State of Utah, WSCA-NASPO, or 3<sup>rd</sup> party audit provider to ensure accurate pricing.

Per Solicitation JP14001, the following pricing/product requirements and instructions apply:

**1.11 Pricing Structure**

**Pricing Structure:** Pricing for the State of Utah WSCA-NASPO Master Agreements shall be based on the Percent Discount off the current global MSRP Schedule applicable to United States customers.

**1.12 Price Guarantee Period**

**Price Guarantee Period:** The Data Communication Provider's Discount rate shall remain in effect for the term of the WSCA-NASPO Master Price Agreement.

### **1.13 Price Escalation**

**Equipment, Supplies and Services:** Data Communications provider may update the pricing on their MSRP price list one time every year after the first year of the original contract term. The WSCA-NASPO Contract Administrator will review a documented request for a Price Schedule price list adjustment only after the Price Guarantee Period.

### **1.14 Price Reductions**

In the event of a price decrease in any category of product at any time during the contract in a Provider's Price Schedule, including renewal options, the WSCA-NASPO Contract Administrator shall be notified immediately. All Price Schedule price reductions shall be effective upon the notification provided to the WSCA-NASPO Master Agreement Administrator.

### **1.20 WSCA Administrative Fee**

The Contracted Supplier must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the contract. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on the actual sales of all products and services in conjunction with your quarterly reports. The WSCA-NASPO administrative fee must be included when determining the pricing offered. The WSCA-NASPO administrative fee is not negotiable and shall not be added as a separate line item on an invoice.

Additionally, some WSCA-NASPO participating entities may require that an administrative fee be paid directly to the WSCA-NASPO participating entity on purchases made by purchasing entities within that State. For all such requests, the fee percentage, payment method and payment schedule for the participating entity's administrative fee will be incorporated in the Participating Addendum. Data Communications Provider will be held harmless, and may adjust (increase) the WSCA-NASPO Master Agreement pricing by the fee percentage for that participating entity accordingly for purchases made by purchasing entities within the jurisdiction of the State. All such agreements may not affect the WSCANASPO fee or the prices paid by the purchasing entities outside the jurisdiction of the participating entities requesting the additional fee.

### **5.3.2 ADDING PRODUCTS**

The ability to add new equipment and services is for the convenience and benefit of WSCA-NASPO, the Participating States, and all the Authorized Purchasers. The intent of this process is to promote "one-stop shopping" and convenience for the customers and equally important, to make the contract flexible in keeping up with rapid technological advances. The option to add new product or service categories and/items will expedite the delivery and implementation of new technology solutions for the benefit of the Authorized Purchasers.

After the contracts are awarded, additional IT product categories and/or items may be added per the request of the Contractor, a Participating State, an Authorized Purchaser or WSCA-NASPO. Additions may be ad hoc and temporary in nature or permanent. All additions to an awarded Contractor or Manufacturer's offerings must be products, services, software, or solutions that are commercially available at the time they are added to the contract award and fall within the original scope and intent of the RFP (i.e., converged technologies, value adds to manufacturer's solution offerings, etc.).

**5.3.2.1 New Product from Contractors** — If Contractor, a Participating State, an Authorized Purchaser or WSCA-NASPO itself requests to add new product categories permanently, then all awarded Contractors (Manufacturers) will be notified of the proposed change and will have the opportunity to work with WSCA to determine applicability, introduction, etc. Any new products or services must be reviewed and approved by the State of Utah WSCA-NASPO Contract Administrator.

**5.3.2.2 Ad Hoc Product Additions** — A request for an ad hoc, temporary addition of a product

category/item must be submitted to WSCA-NASPO via the governmental entity's contracting/purchasing officer. Ad hoc, temporary requests will be handled on a case-by-case basis. The State of Utah WSCA-NASPO Contract Administrator must also be notified and will review and approve the addition before the purchase is finalized by the end user. The State of Utah WSCA-NASPO Contract Administrator has the final approval on any Ad Hoc product additions.

**5.3.2.3 Pricelist Updates** — As part of each Contractor's ongoing updates to its pricelists throughout the contract term, Contractor can add new SKUs to its awarded product categories that may have been developed in-house or obtained through mergers, acquisitions or joint ventures; provided, however, that such new SKUs fall within the Contractor's awarded product categories. Updated price lists will be reviewed and approved by the State of Utah WSCA-NASPO Contract Administrator before the revised price list is considered valid.